

§ 205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan for financial assistance under title I, X, XIV, or XVI(AABD) of the Social Security Act includes aid or assistance to individuals in institutions as defined in § 233.60(b) (1) and (2) of this chapter the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to FSA, OFA upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(a) Health (dietary standards and accident prevention);

(b) Humane treatment;

(c) Sanitation;

(d) Types of construction;

(e) Physical facilities, including space and accommodations per person;

(f) Fire and safety,

(g) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;

(h) Resident records;

(i) Admission procedures;

(j) Administrative and fiscal records;

(k) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

(3) Provide for cooperative arrangements with the standard-setting authority(ies) in the development of standards directed toward assuring adequate quality of care; in upgrading of institutional programs and practice; in actions necessary to close institutions that mistreat or are hazardous to the safety of the patients; and in planning so that institutions may be geographically located in accordance with need.

(b) *Federal financial participation.* (1) Federal financial participation is available in staff and related costs of the State or local agency that are necessary to discharge the responsibilities of the State agency under this section, including such costs for staff:

(i) Participating with other agencies and community groups in activities to set up the authority(ies) and to advise on the formulation of policy for the establishment and maintenance of standards;

(ii) On loan for a time limited period to work with the standard-setting authority(ies) in upgrading institutional care;

(iii) Engaged in the function of coordination in States where there is more than one authority; and

(iv) Engaged in adjusting complaints and making reports and recommendations to the standard-setting authority(ies) on conditions which appear to be in violation of such standards.

(2) Federal financial participation is not available in the costs incurred by the standard-setting authority(ies) in establishing and maintaining standards for institutions.

[36 FR 3862, Feb. 27, 1971, as amended at 45 FR 56686, Aug. 25, 1980; 53 FR 36580, Sept. 21, 1988]

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

AUTHORITY: Sections 402 and 1102 of the Social Security Act (42 U.S.C. 602 and 1302) and Pub. L. No. 97-248, 96 Stat. 324, and Pub. L. No. 99-603, 100 Stat. 3359.

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV-A, X, XIV, or XVI(AABD), of that Social Security Act shall provide that:

(1) Each individual wishing to do so shall have the opportunity to apply for assistance under the plan without delay. Under this requirement:

(i) Each individual may apply under whichever of the State plan plans he chooses;

(ii) The agency shall require a written application, signed under a penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii), such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit;

(iii) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the agency and when so accompanied may also be represented by them.

(iv)–(v) [Reserved]

(vi) Every recipient in a State which provides a supplemental payment under § 233.27 of this chapter shall have an opportunity to request that payment without delay.

(vii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(A) Any natural or adoptive parent, or stepparent (in the case of States with laws of general applicability); and

(B) Any blood-related or adoptive brother or sister; *Exception:* needs and income of disqualified alien siblings, pursuant to § 233.50(c), are not considered in determining the eligibility and payment of an otherwise eligible dependent child.

(2)(i) Applicants shall be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, under-

standable terms are publicized and available in quantity.

(ii) Procedures shall be adopted which are designed to assure that recipients make timely and accurate reports of any change in circumstances which may affect their eligibility or the amount of assistance.

(iii) All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that eligibility and income information will be regularly requested from agencies specified in § 205.55 and will be used to aid in determining their eligibility for assistance.

(3) A decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of:

(i) 45 days for OAA, AFDC, AB, AABD (for aged and blind); and

(ii) 60 days for APTD, AABD (for disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications which covers the time from date of application under the State plan to the date that the assistance check, or notification of denial of assistance or change of award is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting aid, or as a basis for denial of an application or for terminating assistance.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action,

and an explanation of the individual's right to request a hearing.

(5)(i) Financial assistance and medical care and services included in the plan shall be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and shall be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(ii) Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under §205.55, if other evidence establishes the individual's eligibility for assistance.

(6) Assistance shall begin as specified in the State plan, which:

(i) For financial assistance.

(A) Must be no later than:

(1) The date of authorization of payment, or

(2) Thirty days in OAA, AFDC, AB, and AABD (as to the aged and blind), and 60 days in APTD and AABD (as to the disabled), from the date of receipt of a signed and completed application form, whichever is earlier: *Provided*, That the individuals then met all the eligibility conditions, and

(B) For purposes of Federal financial participation in OAA, AB, APTD, and AABD, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions; and

(C) In AFDC, for purposes of Federal financial participation, may be as early as the date of application provided that the assistance unit meets all the eligibility conditions; and

(D) In AFDC, States that pay for the month of application must prorate the payment for that month by multiplying the amount payable if payment were made for the entire month including special needs in accordance with §233.34 by the ratio of the days in the month including and following the date of application (or, at State option, the date of authorization of payment) to the total number of days in such month. The State plan may provide for

using a standard 30-day month to determine the prorated amount.

(7) In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the agency shall give timely and adequate notice. Such notice shall comply with the provisions of §205.10 of this chapter.

(8) Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

(i) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, after a report is obtained which indicates changes in the individual's circumstances that may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency established time standards, but not less frequently than every 12 months in OAA, AB, APTD, and AABD, on eligibility factors subject to change. For recipients of AFDC, all factors of eligibility will be redetermined at least every 6 months except in the case of monthly reporting cases or cases covered by an approved error-prone profiling system as specified in paragraph (a)(9)(iv) of this section. Under the AFDC program, at least one face-to-face redetermination must be conducted in each case once in every 12 months.

(iv) In accordance with paragraph (a)(9)(iii) of this section, under an alternative redetermination plan based on error-prone profiling, which has

been approved by the Secretary, and includes:

(A) A description of the statistical methodology used to develop the error-prone profile system upon which the redetermination schedule is based;

(B) The criteria to be used to vary the scope of review and to assign different types of cases; and

(C) A detailed outline of the evaluation system, including provisions for necessary changes in the error-prone output, such as types of cases, types of errors, frequencies of redeterminations and corrective action.

(10) Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(11) [Reserved]

(12) The State agency shall establish and maintain methods by which it shall be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it shall take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) *Applicant* is a person who has, directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for public assistance from the agency administering the program, and whose application has not been terminated.

(2) *Application* is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the State agency) his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance. Such inquiry may be followed by an application. When an individual is required to be included in an existing assistance unit pursuant to paragraph (a)(1)(vii),

such individual will be considered to be included in the application, as of the date he is required to be included in the assistance unit.

(3) *Date of Application* is the date on which the action described in paragraph (b)(2) of this section occurs.

(4) *Redetermination* is a review of factors affecting AFDC eligibility and payment amount; e.g. continued absence, income (including child and spousal support), etc.

(5) *Assistance Unit* is the group of individuals whose income, resources and needs are considered as a unit for purposes of determining eligibility and the amount of payment.

[48 FR 28407, June 21, 1983 as amended at 49 FR 35599, Sept. 10, 1984; 51 FR 7217, Feb. 28, 1986; 51 FR 9203, Mar. 18, 1986; 52 FR 48689, Dec. 24, 1987; 53 FR 30433, Aug. 12, 1988; 57 FR 30157, July 8, 1992]

PART 211—CARE AND TREATMENT OF MENTALLY ILL NATIONALS OF THE UNITED STATES, RETURNED FROM FOREIGN COUNTRIES

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AUTHORITY: Secs. 1–11, 74 Stat. 308–310; 24 U.S.C. 321–329.

SOURCE: 39 FR 26546, July 19, 1974, unless otherwise noted.

§ 211.1 General definitions.

When used in this part: